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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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PHYLLIS J. HOOVLER,  
*Complainant,*

v.

CLINTON COUNTY ASSESSOR'S OFFICE,  
*Respondent.*

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Formal Complaint No.  
18-FC-54

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Clinton County Assessor's Office (Assessor) violated the Access to Public Records Act<sup>1</sup> (APRA). Clinton County Assessor Dana M. Myers filed a response on behalf of the office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 9, 2018.

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<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10

## BACKGROUND

This case involves a dispute over a public records request that is related to an overarching dispute about taxpayer's property tax assessment in Clinton County.

Phyllis J. Hoovler ("Complainant") asserts that the Clinton County Assessor's Office ("Assessor") violated the Access to Public Records Act ("APRA") by improperly denying her access to certain public records.

On March 22, 2018, Hoovler submitted a public records request to the Assessor, via email, seeking the following:

1. A copy of the minutes from the PTABOA<sup>2</sup> Hearing held 3/7/2018 concerning the 2017/pay 2018 assessment appeal.
2. Any and all emails, correspondence, and communications concerning the above referenced property with the previous six months. Specifically, but not limited to, emails, correspondence and communication to and from the Clinton County Auditor, PTABOA members, AdValorem Solutions, DLFG and IBTR.

Hoovler contends that she received no response from the Assessor. So, Hoovler sent another email request on March 30, 2018, where she requested the same records she asked for in the first request. Again, Hoovler claims she received no response from the Assessor. She further asserts that the "documents are essential in essential in filing an appeal with the [Indiana Board of Tax Review] on a timely basis."

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<sup>2</sup> The Clinton County Property Tax Assessment Board of Appeals.

As of April 6, 2018, Hoover contends she had not received any response from the Assessor. As a result, Hoover filed a formal complaint with this Office on April 9, 2018.

Clinton County Assessor Dana M. Meyers filed an answer to Hoover's complaint on April 23, 2018. The Assessor does not dispute the claim that she failed to respond to Hoover's records requests. Even so, the Assessor asserts that she did not deny Hoover's requests and the office produced the minutes of the PTABOA meeting requested by Hoover on April 23, 2018.

Further, as it pertains to the second part of Hoover's request, the Assessor asserts that a "copy of the letter sent to taxpayers to schedule hearing times and a copy of the letter sent to the PTABOA members as to when the hearings were being held was included with the minutes mailing."

Lastly, the Assessor contends that Hoover is engaging in "unfounded personal attacks against her and her position as Assessor." The Assessor asserts that Hoover's actions—which include reporting the Assessor the Clinton County Prosecutor alleging unlawful behavior—and allegations since the year 2012 have been found to be unmeritorious and have reached a "very serious and unfortunate level."

## ANALYSIS

The primary issue in this case is whether the Clinton County Assessor's Office's response to Hoover's public records requests constitutes an improper denial under the Access to Public Records Act.

### 1. The Access to Public Records Act (APRA)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *Id.*

There is no dispute that the Clinton County Assessor's Office ("Assessor") is a public agency for the purposes of the APRA; and thus, subject to the Act's disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy the Assessor's public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Still, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of

public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

### **1.1 Public Records Requests, Response, and Denial**

Hoovler argues that the Assessor improperly denied her access to public records under APRA when the Assessor failed to respond to two requests for the same records that Hoovler submitted on March 22 and March 30 respectively. Although the Assessor does not deny or otherwise dispute Hoovler's claim that she failed to respond, the Assessor contends that the request was not denied, albeit it being delayed.

Under APRA, a public agency is required to make a response to a written request that has been mailed—including email—within seven days after it is received or the request is deemed denied. *See* Ind. Code § 5-14-3-9(c). Stated differently, if an agency fails to acknowledge a public records request entirely, after seven days the request is denied by operation of law.

Notably, APRA requires only a response by the public agency within the relevant time frame, not actual production of the requested records. In context, a satisfactory agency response may simply acknowledge receipt of the request.

Here, there appears to be no disagreement between the parties that Hoovler did not receive a response from the Assessor to either request within the required time frame. As a result, the request are deemed denied by operation of law under APRA.

Critically, every written public records request that a public agency denies must provide the denial in writing and include

a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record as well as the name and title of the official denying the record. *See* Ind. Code § 5-14-3-9(d). That did not happen here.

The Assessor should remain mindful that avoiding the automatic denial of a public records request is a simple matter: acknowledge receipt of the request within the appropriate time frame. Acknowledging each public request is a sufficient response under the law to avoid triggering an automatic denial. What is more, this allows the agency to produce and provide responsive records within a *reasonable time*. Ind. Code § 5-14-3-3(b). Indeed, that would be the case here had the request been acknowledged by the Assessor.

As an aside, based on the Assessor's response to the complaint, it appears there may be some festering resentment, and acrimony between the parties, perhaps for years. To be sure, the existence of such tension is unfortunate and frustrating, but it does not relieve public agency of its duties under APRA. Moreover, this Office does not react favorably to evidence of gadfly requestors who seek to weaponize the APRA for the purpose of tormenting public officials over personal disputes and grievances.

This Office is not suggesting that is the case here, but rather observing that such behavior does exist and this Office discourages the practice.

Regardless, under APRA, public agencies have a duty to provide members of the public with certain information in a manner that comports with the statute. Based on the evidence submitted to this Office, it appears that did not happen in this case.

## CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that Clinton County Assessor's Office violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor